

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re JDS UNIPHASE CORPORATION
SECURITIES LITIGATION

No. C 02-1486 CW

ORDER GRANTING
DEFENDANTS JDS,
STRAUS, MULLER
AND ABBE'S MOTION
TO DISMISS
PLAINTIFFS' ADVA
CLAIMS

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In its August 24, 2007 order on the parties' cross-motions for summary judgment, the Court deemed Plaintiffs' complaint amended to challenge additional alleged misstatements. August 24, 2007 Order at 12. The Court also permitted Defendants to file "a motion to dismiss the claims related to ADVA . . . if they have grounds to do so that were not raised or addressed in their motion for summary judgment." Id. On September 18, 2007, Defendants JDS Uniphase Corporation (JDSU), Jozef Straus, Anthony Muller and Charles Abbe

1 filed such a motion. Plaintiffs oppose the motion.¹ Having
2 considered the parties' papers and the evidence cited therein, the
3 Court grants Defendants' motion.

4 As discussed in the order on the parties' cross-motions for
5 summary judgment, Plaintiffs' ADVA claims are based on Defendants'
6 valuation of ADVA, a company in which JDSU acquired a twenty-nine
7 percent interest through its acquisition of E-TEK. Plaintiffs
8 claim that Defendants should have written down the carrying value
9 of ADVA during the quarter ending December 31, 2000 because of
10 declines in ADVA's stock prices. Therefore, Plaintiffs argue that
11 the April 24, 2001 press release and the May 11, 2001 Form 10-Q for
12 the quarter ended March 31, 2001, which both reported assets of
13 \$65,039.5 million, including \$714.5 million based on JDSU's
14 valuation of its investment in ADVA, violate § 10(b) of the
15 Securities Exchange Act of 1934.

16 The Court has already granted summary judgment to Defendants
17 on Plaintiffs' claims related to Defendants' statements of good
18 will in the press release and Form 10-Q because both documents
19 contained adequate warnings about the need to write-off good will.
20 Therefore, the Court found that the information regarding the

21
22 ¹As an initial matter, Plaintiffs argue Defendants' motion
23 should be denied because Defendants make extensive reference to
24 materials outside the pleadings. In the alternative, Plaintiffs
25 argue that the motion should be treated as a motion for summary
26 judgment. See Fed. R. Civ. P. 12(b). Defendants counter that they
27 relied on the documents to which Plaintiffs referred in their
28 opposition to Defendants' motion for summary judgment because
Plaintiffs have not filed an amended complaint. In any event, the
Court finds that Defendants' arguments entitle it to summary
judgment on claims based on these two statements.

1 upcoming good will write-off had already entered the market and
2 Defendants' failure explicitly to describe the write-off could not
3 be found misleading. August 24, 2007 Order at 33 (citing In re
4 Convergent Technologies Security Litigation, 948 F.2d 507, 513 (9th
5 Cir. 1991)).

6 Defendants argue that similar reasoning applies here because
7 the April 24, 2001 press release stated that JDSU was "evaluating
8 the carrying value of certain long-lived assets, consisting
9 primarily of \$56.2 billion of goodwill recorded on its balance
10 sheet at March 31, 2001." Fernandez Decl., Ex. 5 at 3. Further,
11 the press release recognized "[d]ownturns in telecommunications
12 equipment and financial markets" and stated that JDSU "anticipates
13 recording additional charges to reduce the carrying value of the
14 unamortized goodwill and other long-lived assets and such
15 adjustments could represent a substantial portion of their carrying
16 value." Id. Similarly, the May 11, 2001 Form 10-Q stated that
17 JDSU was

18 currently evaluating the carrying value of certain long-
19 lived assets and acquired equity method investments,
20 consisting primarily of \$56.2 billion of goodwill and
the Company's \$757 million equity method investment in
ADVA [] recorded on its balance sheet at March 31, 2001.

21 Id., Ex. 3 at 4. The Form 10-Q repeated the general statements
22 regarding downturns in the market and the anticipation of future
23 write-downs. Id.

24 Plaintiffs counter that the press release's reference to
25 "long-lived assets" does not capture the value of ADVA, an equity
26 method investment. First, Plaintiffs argue that long-lived assets
27 refer only to tangible assets. However, this argument is

1 undermined by JDSU's statement that the long-lived assets and
2 acquired equity method investments it was evaluating consisted
3 "primarily of \$56.2 billion of goodwill and the Company's \$757
4 million equity method investment in ADVA." Id., Ex. 5 at 21.
5 Neither good will nor equity method investments are tangible
6 assets.

7 Further, Plaintiffs point to the Form 10-Q, which explicitly
8 discusses long-lived assets and acquired equity method investments
9 as evidence that long-lived assets cannot include equity method
10 investments. Defendants argue that the discussion and balance
11 sheets contained in the press release are less detailed than those
12 in the Form 10-Q. While it might have been more precise if the
13 Form 10-Q had stated that JDSU was assessing its long-lived assets
14 including acquired equity method investments, the Form 10-Q was
15 filed after the press release and would not have caused confusion
16 for an individual reading the press release.

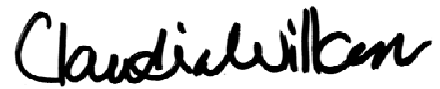
17 Plaintiffs next argue that the future write-down of ADVA was
18 not adequately included in the press release or Form 10-Q because
19 the documents did not explicitly state that the investment was
20 impaired or discuss the amount of the anticipated write-down.
21 However, the press release acknowledged "[d]ownturns in the
22 telecommunications equipment and financial markets," stated that
23 JDSU "anticipate[d] recording additional charges to reduce the
24 carrying value of . . . long-lived assets" and recognized that
25 "such adjustments could represent a substantial portion of their
26 carrying value." Id., Ex. 5 at 3. Similarly, the Form 10-Q
27 specifically recognized JDSU's "\$757 million equity method
28

1 investment in ADVA" and repeated the warning that "adjustments
2 could represent a substantial portion of their carrying value."
3 Id., Ex. 3 at 21.

4 The Court finds that the information regarding JDSU's need to
5 write-down the carrying value of ADVA was already in the market at
6 the time of the alleged misstatements. Therefore, the Court GRANTS
7 Defendants' motion (Docket No 1450).

8 IT IS SO ORDERED.

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10 Dated: 10/10/07



CLAUDIA WILKEN
United States District Judge